

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

ADOLPH SPEARS, SR.,

Petitioner,

v.

MARION FEATHER,

Respondent.

MOSMAN, J.,

No. 3:13-cv-01743-JE

OPINION & ORDER

Petitioner Adolph Spears, Sr. filed this Petition for Writ of Habeas Corpus [1] under 28 U.S.C. § 2241, alleging that his sentence was rendered unlawful by the rule announced in *Alleyne v. United States*, 133 S. Ct. 2151 (2013), and that he is thus actually innocent. Respondent Mr. Feather filed a response [14], and Petitioner filed an additional brief [15]. Magistrate Judge Jelderks issued his Findings and Recommendation (“F&R”) [16] on April 16, 2014, recommending that the Petition [1] be DISMISSED for lack of subject matter jurisdiction. Petitioner timely filed objections [19] to the F&R.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Jelderks's recommendation, and I ADOPT the F&R [16] as my own opinion. The Petition for Writ of Habeas Corpus [1] is DISMISSED for lack of subject matter jurisdiction. Because Petitioner has made no substantial showing of the denial of a constitutional right, a certificate of appealability is DENIED. 28 U.S.C. § 2253(c)(1).

IT IS SO ORDERED.

DATED this 25th day of June, 2014.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Judge